

UNITED STATES DISTRICT COURT

for the

District of Minnesota

United States of America

v.

Lee Kirk

Date of Original Judgment:

11/18/2009

Date of Previous Amended Judgment:

(Use Date of Last Amended Judgment if Any)

Case No: 08-cr-232(11)

USM No: 14060-041

Pro se

Defendant's Attorney

ORDER REGARDING MOTION FOR SENTENCE REDUCTION PURSUANT TO 18 U.S.C. § 3582(c)(2)

Upon motion of ☒ the defendant ☐ the Director of the Bureau of Prisons ☐ the court under 18 U.S.C. § 3582(c)(2) for a reduction in the term of imprisonment imposed based on a guideline sentencing range that has subsequently been lowered and made retroactive by the United States Sentencing Commission pursuant to 28 U.S.C. § 994(u), and having considered such motion, and taking into account the policy statement set forth at USSG §1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable,

IT IS ORDERED that the motion is:

☒ DENIED. ☐ GRANTED and the defendant's previously imposed sentence of imprisonment (as reflected in the last judgment issued) of _____ months is reduced to _____.

I. COURT DETERMINATION OF GUIDELINE RANGE (Prior to Any Departures)

Previous Offense Level: _____

Amended Total Offense Level: _____

Criminal History Category: _____

Criminal History Category: _____

Previous Guideline Range: _____

Amended Guideline Range: _____

II. SENTENCE RELATIVE TO THE AMENDED GUIDELINE RANGE

☐ The reduced sentence is within the amended guideline range.

☐ The previous term of imprisonment imposed was less than the guideline range applicable to the defendant at the time of sentencing as a result of a substantial assistance departure or Rule 35 reduction, and the reduced sentence is comparably less than the amended guideline range.

☐ The reduced sentence is above the amended guideline range.

III. ADDITIONAL COMMENTS

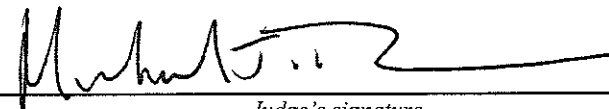
Although the Court concludes that the Fair Sentencing Act reduces Defendant's Offense Level, Defendant's guideline range remains unchanged. See U.S.S.G. § 5G1.1(b) ("Where a statutorily required minimum sentence is greater than the maximum of the applicable guideline range, the statutorily required minimum sentence shall be the guideline sentence."). Defendant is not eligible a sentence reduction. See *United States v. Baylor*, 556 F.3d 672, 673 (8th Cir. 2009) ("A district court does not have the authority to grant a § 3582(c)(2) sentencing reduction if the relevant Guidelines amendment does not have the effect of lowering the defendant's applicable Guidelines range.").

Except as otherwise provided, all provisions of the judgment dated 11/18/2009 shall remain in effect.

IT IS SO ORDERED.

Order Date:

1-26-12



Judge's signature

Effective Date:

(if different from order date)

Chief Judge Michael J. Davis, U.S. District Court

Printed name and title